

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEITH ALAN LASKO,

Plaintiffs,

vs.

AMERICAN BOARD OF SURGERY, et al.,

Defendants.

2:13-cv-01893-JAD-NJK

ORDER

(Docket Nos. 179, 187)

Pending before the Court is Plaintiff's Motion for Entry of Clerk's Default against Defendant American Board of Medical Specialties, Inc. ("Defendant"). Docket No. 179. The Court has considered Plaintiff's Motion, Defendant's Response, and Plaintiff's Reply. Docket Nos. 179, 180, 181.¹

Also pending before the Court is Plaintiff's Motion for Default Judgment against Defendant. Docket No. 187. The Court has considered Plaintiff's Motion and Defendant's Response. Docket Nos. 187, 188. No Reply was filed.

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The Court notes that the document docketed at Plaintiff's Reply to Defendant's Response instead appears to relate to a motion filed by a different Defendant (American Board of Internal Medicine), and does not relate at all to the motion for default. Docket No. 181. The Court reviewed the docket, but can find no Reply. *See* Docket.

1 **A. Motion for Default**

2 Plaintiff's Motion for Clerk's Entry of Default asks the Court to enter default against Defendant
3 because Defendant was timely served with the Second Amended Complaint on October 8, 2014, and has
4 not yet filed its Answer. Docket No. 179, at 1-2. Therefore, Plaintiff asks the Court to enter default
5 against Defendant. *Id.*

6 Defendant disputes that service was timely and states that it also challenges venue in this matter.
7 As a result, Defendant points out, it filed a Motion to Dismiss the Second Amended Complaint on
8 October 29, 2014. Docket No. 180, at 2-3. *See also* Docket No. 172. Defendant submits that its Motion
9 to Dismiss was proper, and was timely filed, pursuant to the Federal Rules of Civil Procedure. *Id.*
10 Further, Defendant states that its Answer to the Second Amended Complaint is not due until 14 days
11 after the Court rules on its Motion to Dismiss, if the Court denies it, and the Motion is currently pending
12 before the Court. *Id.*; Fed.R.Civ.P. 12(a)(4)(A).

13 The Court finds that Defendant complied with the Federal Rules of Civil Procedure, and that it
14 timely filed its Motion to Dismiss. Additionally, Fed.R.Civ.P. 55(a) states that default shall be entered
15 when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise
16 defend..." As Defendant has filed a Motion to Dismiss the Second Amended Complaint, it has clearly
17 moved to defend against the instant case and, therefore, default is not appropriate.

18 **B. Motion for Default Judgment**

19 Plaintiff's Motion for Default Judgment repeats his claim that Defendant has not answered the
20 Second Amended Complaint. Docket No. 187, at 2. He therefore asks the Court to enter default
21 judgment pursuant to Fed.R.Civ.P. 55(b)(2). *Id.*

22 Defendant repeats its argument from its response to Plaintiff's motion for default. Docket No.
23 188. Defendant disputes that service was timely and states that it also challenges venue in this matter.
24 As a result, Defendant points out, it filed a Motion to Dismiss the Second Amended Complaint on
25 October 29, 2014. *Id.*, at 3-4. *See also* Docket No. 172. Defendant submits that its Motion to Dismiss
26 was proper, and was timely filed, pursuant to the Federal Rules of Civil Procedure. *Id.* Further,
27 Defendant states that its Answer to the Second Amended Complaint is not due until 14 days after the
28 Court rules on its Motion to Dismiss, and the Motion is currently pending before the Court. *Id.*;

1 Fed.R.Civ.P. 12(a)(4)(A).

2 Defendant has complied with the Federal Rules of Civil Procedure in filing its Motion to
3 Dismiss, which is currently pending before the Court. Therefore, the time to respond to Plaintiff's
4 Second Amended Complaint has not yet occurred, and default judgment is not appropriate.

5 **C. Conclusion**

6 Accordingly, for the reasons stated above and good cause shown,

7 **IT IS ORDERED** that Plaintiff's Motion for Entry of Clerk's Default against Defendant
8 American Board of Medical Specialties, Inc., Docket No. 179, is hereby DENIED.

9 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Default Judgment, Docket No. 187,
10 is hereby DENIED.

11 IT IS SO ORDERED.

12 DATED: January 9, 2015.

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16 NANCY J. KOPPE
17 United States Magistrate Judge
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